

UNITED STATES DISCTRRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARK HARPER, as Administrator of the Estate of  
MERLE M. HARPER,

Plaintiff

v.

**ORDER**  
**11-CV-687S**

UNITED STATES OF AMERICA,  
Defendant

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Before this Court is Plaintiff's Petition for Approval of Settlement (Docket No. 30) in this medical malpractice case. Because this action is brought on behalf of an Estate, it cannot be settled without leave of this Court. See Local Rule 41(a)(2)(A).

This Court has considered Plaintiff's motion and the papers filed in support thereof and finds that no hearing is required. This Court further finds that the proposed settlement is in the best interests of the estate and distributees. In so finding, this Court has considered: (1) the circumstances giving rise to the claim; (2) the nature and extent of the damages; (3) the terms of the settlement and amount of attorney's fees and other disbursements; (4) the circumstances of any other claims or settlement arising out of this same occurrence; and (5) the plaintiff's statement why he believes this settlement is appropriate. See Local Rule 41(a)(2)(i)-(iv). Plaintiff's application will therefore be granted and this settlement approved.

**ORDERED**, that Plaintiff's Petition to Approve Settlement (Docket No. 30) is  
GRANTED, and it is further,

**ORDERED**, that this settlement (including the terms and amount) shall be kept confidential, and shall not be disclosed by the parties or the parties' attorneys, other than to the parties' accountants, attorneys, insurers, estate planner, financial advisors, government authorities or such other individuals as may be mutually agreed to by the prior written consent, or as required by law, and it is further,

**ORDERED**, that the sum of \$10,573.13 is approved as reimbursement of disbursements advanced by Brown Chiari LLP, and it is further,

**ORDERED**, that attorneys' fees for Brown Chiari LLP are approved in the sum of \$28,606.72; and it is further

**ORDERED**, that the entire net settlement proceeds shall be allocated to the conscious pain and suffering cause of action alleged in plaintiff's complaint; and it is further,

**ORDERED**, that those proceeds allocated to the conscious pain and suffering cause of action may be distributed upon Decree of the Erie County Surrogate's Court in accordance with its determination; and it is further,

**ORDERED**, that the final pretrial conference scheduled before this Court for Friday, November 15, 2013, at 9:00 a.m. is canceled.

**ORDERED**, that the Clerk of Court is directed to close this case.

Dated: November 11, 2013

/s/William M Skretny  
WILLIAM M. SKRETNY  
Chief Judge  
United States District Court